

SUPREME COURT OF ARKANSAS

No. 08-380

CITY OF CENTERTON,

APPELLANT,

VS.

CITY OF BENTONVILLE, GEORGE AND
NANCY HUBER, DANIEL AND RUBY
DAVIES, SANDRA AND GARY
TOWNSEND, AND LOIS PETERS
REVOCABLE TRUST,

APPELLEES,

Opinion Delivered November 6, 2008

APPEAL FROM THE BENTON COUNTY
CIRCUIT COURT,
NO. CV2005-2066,
HON. DAVID S. CLINGER, JUDGE,

APPEAL DISMISSED.

JIM HANNAH, Chief Justice

1. MOTIONS — POSTTRIAL MOTIONS — APPELLANT’S MOTION TO AMEND THE JUDGMENT, WHICH WAS FILED ON OCTOBER 14, 2007, WAS DEEMED DENIED ON NOVEMBER 23, 2007. — A posttrial motion extends the time within which to file the notice of appeal to thirty days from the date the posttrial motion is decided; however, if the circuit court fails to decide the motion within thirty days, the motion is deemed denied as of the thirtieth day; here, the thirty days within which the circuit court had to decide the motion ran November 23, 2007, and the court did not decide the motion until November 30, 2007; thus, the motion was deemed denied on November 23, 2007.
2. COURTS — JURISDICTION — SUPREME COURT LACKED JURISDICTION TO HEAR APPEAL WHERE NOTICE OF APPEAL WAS NOT TIMELY FILED. — Pursuant to Ark. R. App. P.—Civ. 4(a), appellant’s notice of appeal had to be filed within thirty days of entry of the judgment appealed from; here, appellant had thirty days from November 23, 2007, or until December 26, 2007, to file the notice of appeal; it was filed on December 28, 2007; accordingly, the supreme court lacked jurisdiction to hear the appeal and the appeal was dismissed.

Slinkard Law Firm, by: *Andrew R. Huntsinger*, for appellant.

Clark, & Spence, by: *George R. Spence*, Bentonville City Attorney, for appellee City of Bentonville.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *L. Kyle Heffley*, for appellees George and Nancy Huber, Daniel and Ruby Davies, and Lois Peters Revocable Trust.

The City of Centerton appeals an October 11, 2007 order declaring the City's annexation ordinance invalid. We lack jurisdiction to hear this appeal.

The order appealed from was entered on October 11, 2007. Centerton filed a posttrial motion to amend the judgment on October 14, 2007. A posttrial motion extends the time within which to file the notice of appeal to thirty days from the date the posttrial motion is decided. *See* Ark. R. App. P.–Civ. 4(b)(1). However, if the circuit court fails to decide the motion within thirty days, the motion is deemed denied as of the thirtieth day. *Id.*

The thirty days within which the circuit court had to decide the motion ran November 23, 2007, and the court did not decide the motion until November 30, 2007. Thus, the motion was deemed denied on November 23, 2007. Centerton had thirty days from November 23, 2007, or until December 26, 2007, to file the notice of appeal. It was filed on December 28, 2007. Pursuant to Ark. R. App. P.–Civ. 4(a), the notice of appeal had to be filed within thirty days of entry of the judgment appealed from. *See Murchison v. Safeco*, 367 Ark. 166, 238 S.W.3d 11 (2006). This court may not hear the appeal. It is dismissed.